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BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON DC 20001-5303

In re Application of
STOLTZ et. al. : DECISION ON
Application No.: 10/697,943
PCT App. No.: PCT/SE02/00951
Int'l Filing Date: 17 May 2002 : PETITIONS UNDER
Priority Date: 17 May 2001
Attorney's Docket No.: STOLTZ11
For: SAMPLING DEVICE AND METHOD FOR: 37 CFR 1.182 & 1.137(b)
OBTAINING SAMPLES OF INTERNAL
SUBSTANCES

This is a decision in response to applicant's "Petition under 37 CFR 1.182", filed in the United States Patent and Trademark Office (USPTO) on 10 May 2006. The petition requests that the above referenced application be treated as an application filed under 35 U.S.C. 371 rather than 35 U.S.C. 111(a).

BACKGROUND

On 17 May 2002, applicant filed international application PCT/SE02/00951, which claimed a priority date 17 May 2001. The thirty month period for entry into the U.S. national stage ended on 17 November 2003.

On 31 October 2003, applicant filed a request for a United States application. The transmittal letter was accompanied by, *inter alia*, the filing fee of \$770. The transmittal letter did not expressly request commencement of the national procedures under 35 U.S.C. 371(f). The USPTO treated the papers as a filing under 35 U.S.C. 111(a).

On 10 May 2006, applicant filed the present petition, requesting that the patent application filed on 31 October 2003 be treated as a national stage filing under 35 U.S.C. 371. In a separate submission of application papers on the same day, applicant also filed a petition to revive along with a request for national stage entry of PCT/SE02/00951. This submission was assigned U.S. serial number 10/595,777.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). *See* MPEP 1893.03(a).

In accordance with the notice at 1077 OG 13 (14 April 1987), if the applicant files a U. S. national application and clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he is executing the declaration and seeking a U.S. Patent, as the inventor of the invention described in the identified international application, then the application will be accepted as submitted under 35 U.S.C. 371. *See MPEP 1893.03(a)*, p.1800-192.

A review of the application file reveals that applicant did not use Form PTO-1390 as a transmittal letter. However, applicant did include a declaration which clearly identified PCT/SE02/00951 and the international filing date of 17 May 2002.

Since applicant included a declaration which referred to a particular international application by PCT Application Number (PCT/SE02/00951) and International Filing Date (17 May 2002) and that he is executing the declaration as the inventor of the invention described in the identified international application, then the application will be accepted as submitted under 35 U.S.C. 371. The application was improperly treated as an application under 35 U.S.C. 111(a) (37 CFR 1.495(g)). The transmittal letter authorized that applicant's deposit account be charged and therefore the account will be charged in the amount of \$540 (small entity) for the basic national filing fee for a application filed under 35 U.S.C. 371.

Application papers submitted on 31 October 2003 are considered filed under 35 U.S.C. 371. Accordingly, the original papers deposited on 31 October 2003 were improperly accepted as a filing under 35 U.S.C. 111. The basic national fee of \$540 will be charged to applicant's deposit account. Therefore, the international application was not abandoned as to the United States for failure to pay the basic national fee by midnight on 17 November 2003 (35 U.S.C. 371(d) and 37 CFR 1.495(h)).

Accordingly, applicant's request to identify the application as a 35 U.S.C. 371 filing is granted.

CONDITIONAL PETITION TO REVIVE

On 10 May 2006, applicant filed a conditional petition to revive under 37 CFR 1.137(b) international application no. PCT/SE02/00951, which was assigned U.S. application number 10/595,777. Applicant filed the conditional petition to revive along with the Petition under 27 CFR 1.182, referred to in the paragraphs above. In light of the discussion above and the decision granting applicant's request to treat the application filed on 31 October 2003 as a national stage application of PCT/SE02/00951, applicant' petition under 37 CFR 1.137(b) is DISMISSED as MOOT. As stated above, the papers submitted on 31 October 2003 were improperly treated as an application filed under 35 U.S.C. 111(a) rather than under 35 U.S.C. 371. Moreover, the end result for an international application designating the United States of America is a single U.S. national stage application. Therefore, the submission of two sets of national stage papers to enter the United States would be improper. *See* 35 U.S.C. 363 and 371.

CONCLUSION

Applicant's papers submitted on 31 October 2003 were improperly treated as an application filed under 35 U.S.C. 111(a). Applicant's petition to identify the application as a national stage filing under 35 U.S.C. 371 is GRANTED. The petition fee of \$400 is refunded to applicant's deposit account.

Applicant's petition to revive international application no. PCT/SE02/00951 under 37 CFR 1.137(b) is DISMISSED AS MOOT.

U.S. Application 10/697,943 is the national stage application of PCT/SE02/00951. This

application has an international filing date of 17 May 2002 under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 31 October 2003.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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